

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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RENEE JENKINS,

Plaintiff,

v.

PRIME WASHINGTON, LLC, d/b/a
CORNERSTONES CROSSINGS
APARTMENTS, *et al.*,

Defendants.

Case No. 2:20-cv-0074-KJD-VCF

ORDER

Presently before the Court is Plaintiff's Motion for Voluntary Dismissal (#8). Defendant Prime Washington, LLC ("Prime") filed a response in opposition (#10) to which Plaintiff replied (#14).

Plaintiff seeks to voluntarily dismiss this action pursuant to Federal Rule of Civil Procedure ("Rule") 41(a)(2), because Prime has already filed its answer (#4). A district court should grant a motion for voluntary dismissal under Rule 41(a)(2)4 unless a defendant can show that it will suffer some plain legal prejudice as a result. See Smith v. Lenches, 263 F.3d 972, 975 (9th Cir. 2001)(citing Waller v. Fin. Corp. of Am., 828 F.2d 579, 583 (9th Cir.1987); *see also* Hamilton v. Firestone Tire & Rubber Co., 679 F.2d 143, 145–46 (9th Cir.1982)).


Defendant's opposition focuses mostly on Plaintiff's motive, trying to keep the action in state court. The Ninth Circuit has previously found that forum shopping alone does not meet the definition of legal prejudice: "legal prejudice means prejudice to some legal interest, some legal claim, some legal argument." Lenches, 263 F.3d at 976 (citing Westlands Water Dist. v. United States, 100 F.3d 94, 97 (9th Cir. 1996)(internal quotations omitted). Here, Defendant's concern that he will have to litigate this case again in state court or will have to remove this action a second time do not constitute legal prejudice. See Id. (citing Westlands, 100 F.3d at 96-7;

1 Hamilton v. Firestone Tire & Rubber Co., 679 F.2d 143, 145-56 (9th Cir. 1982)(plain legal
2 prejudice does not result merely because defendant is inconvenienced by having to defend in
3 another forum even when Plaintiff would gain a tactical advantage). Further, remedy is available
4 if this action is refiled. Rule 41(d) allows the new court to order the plaintiff to pay all or part of
5 the costs of the previous action.

6 Accordingly, IT IS HEREBY ORDERED that Plaintiff's Motion for Voluntary Dismissal
7 (#8) is **GRANTED**;

8 IT IS FURTHER ORDERED that this action is **DISMISSED without prejudice**.

9 Dated this 9th day of September, 2020.

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12 Kent J. Dawson
13 United States District Judge
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